IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 762 OF 2007

M/s. Premier Refrigeration Ltd. ....Petitioners.

V/s

Sadashiv B. Poojari & Ors. ....Respondents.

Mr. R.S. Pai i/b M/s. Sanjay Udeshi &Co. for the Petitioner.

Mr. Kumar Vaidyanathan for Respondent No.1.

CORAM: V.M. KANADE, J.
DATE : 3rd May, 2007.

P.C.:

1. The Petitioner is challenging the order passed by the Presiding Officer, Labour Court, Mumbai in Reference (IDA) No. 276 of 2001 whereby an ex parte award was passed in favour of Respondent No.1 and the Petitioner herein was directed to reinstate the Respondent No.1 with continuity of service and with full back-wages with effect from 09/09/1998. The Petitioner is also challenging the order passed by the Industrial Court in Complaint (ULP) No. 426 of 2006 dated 14/08/2006 whereby the Petitioner herein was directed to reinstate the Respondent No.1 in terms of the award made in Reference (IDA) No. 276 of 2001.

2. Brief facts are that the Respondent No.1 was appointed as a Driver on probation on 07/11/1986 and a letter of appointment to that effect was issued by the Petitioner - Company. A demand was raised by the 1st Respondent on the ground that his services were terminated on 09/09/1998 and the dispute was referred for the adjudication vide Reference (IDA) No.276 of 2001. It is the case of the Petitioner that no notice of this reference was ever served on the Petitioner - Company and only when Miscellaneous Criminal Complaint being Criminal Complaint No.125 of 2006 was served on the Petitioner - Company, it came to know about the ex-parte award dated 15/3/2005 which was passed by the Labour Court. The ex-parte award was pursuant to the notice issued by the Deputy Commissioner of Labour which was to be published by the State of Maharashtra on 29/06/2006 and, thereafter, a complaint was filed before the Industrial Court for implementation of the ex-parte award and the Industrial Court by order dated 14/08/2006 directed the Petitioner to implement the ex-parte award published on 29/06/2006.

3. The learned Counsel appearing on behalf of the Petitioner submitted that the 2nd Respondent had failed to issue notice under Rule 22 of the Industrial Disputes (Bombay Rules), 1957 and the provisions of the said Rule had not been complied with and, as a result, there was a breach of principles of natural justice, as no opportunity was given to the Petitioner - Company to state its case before the Labour Court. He submitted that the Labour Court had merely on the basis of bailiff's report held that the Petitioner - Company was served. He relied upon the judgment of this Court in the case of Enron Oil & Gas India Ltd. Vs. Sylvia James Nazareth (Ms.) & Anr. reported in **1999 II CLR 1106.** He then submitted that the learned Labour Court had proceeded to pass the award though there was no justification for passing the impugned award. He invited my attention to the award passed by the Labour Court and submitted that the Labour Court had erred in coming to the conclusion that the Respondent No.1 was a permanent employee only on the basis of clause in the letter of appointment which stated that the Respondent No.1 would be appointed on probation for a

period of six months. He submitted that the Labour Court had erred in arriving at a conclusion that the services of the Petitioner were confirmed. Mr. Pai, the learned Counsel appearing on behalf of the Petitioner also, on merits, tried to point out that the order of the Labour court was illegal. He submitted that since no opportunity was given to the Petitioner to argue its case on merits, the matter was liable to be remanded on payment of costs. He also relied upon the judgment of the Supreme Court in the case of Abhujit Gupta Vs. S.N.B. National Centre, Basic Sciences & Ors. reported in **2006 II CLR 317**.

4. The learned Counsel appearing on behalf of Respondent No.1 submitted that the record and proceedings which were specifically called by this Court indicate that the Petitioner - Company was duly served and, in spite of service, had chosen not to appear before the Labour Court and even before the Industrial Court. He submitted that since sufficient cause had not been shown by the Petitioner, this Court did not have jurisdiction to consider the merits of the case in view of the specific provisions of the said Act.

5. By order dated 27/04/2007, the record and proceedings in respect of both, the Reference and the Complaint, were called by this Court in order to find out as to what steps had been taken by the Complainant to serve the Petitioner - Company. I have perused the roznama of the Labour Court and the roznama of the Industrial Court regarding service of summons on the Petitioner. The roznama of the Complaint indicates that the notice was issued to both parties on 23/07/2001. The bailiff's report at Exhibit-O-2 discloses that when the bailiff had gone to serve notice on two occasions in the Office of the Petitioner - Company, Telephone Operator Smt. Renuka Patne informed him that partner of the Company was out of station and that nobody was authorized to accept the notice and, therefore, she refused to accept the notice. Then the notice was sent by registered A.D to the Petitioner. The acknowledgment which is on record indicates that the registered A.D. was served on the Petitioner - Company. Yet, on the next date, none appeared on behalf of the Company. Again on 14/06/2002, the Labour Court was pleased to issue notice to the Company by RPAD

and, accordingly, on 07/10/2002 roznama indicates that the notice was typed and sent. Exhibit-O-4 is the notice which has been sent by RPAD to the Company. Again, the notice was sent through bailiff on 11/01/2002. Even, thereafter, none appeared on behalf of the Petitioner. Thereafter, the matter was adjourned from time to time and again on 21/10/2003, notice was sent through bailiff which is at Exhibit-O-6. In this notice, the bailiff has stated that notice had been served on the clerk of the Petitioner after obtaining the acknowledgment. The seal of the Company can be seen on the acknowledgment which is given of the said notice and, thereafter, on 02/09/2004 the matter was placed for ex-parte orders against the Petitioner. The matter, thereafter, appeared on baord for ex-parte orders and for filing of documents and recording of evidence of Respondent No.1 on 30/09/2004. On 04/11/2004, 15/12/2004, 19/01/2005 and 16/02/2005 and on 15/3/2005 an ex-parte award was passed.

6. A perusal of the report of the bailiff and the notices which have been sent and served on the Petitioner - Company by RPAD and the acknowledgment receipts which

are part of the record and proceedings clearly indicate that though the Petitioner - Company was duly served, the Petitioner deliberately chose not to appear before the Labour Court. It is pertinent to note here that before the matter was referred to the Labour Court, conciliation proceedings had taken place and whenever notices were served by the Conciliation Officer, representative of the Petitioner - Company had appeared before the Conciliation Officer and had filed written statement defending the stand taken by the Petitioner - Company. Thus, it cannot be conceived that when the matter was at a conciliation stage and the notices were issued by the Conciliation Officer, the notices were duly served and only when the matter was referred to the Labour Court, thereafter the notices were not served on the Petitioner - Company. The record belies the submission which is made by the learned Counsel appearing on behalf of the Petitioner. The record clearly indicates that, at all times, whenever notices were issued by the Court, the same were duly served which can be seen from the bailiff's report and the acknowledgment which is on record. Thus, before the Labour Court, in spite of service, the Petitioner

chose not to appear deliberately and, therefore, the Labour Court was constrained to pass an ex-parte order. Even, thereafter, pursuant to the provisions of section 17 sub-clause (1) & (2), an award was duly published and, in spite of publication of the award, no steps were taken by the Petitioner - Company and, therefore the Respondent No.1 had no other alternative but to approach the Industrial Court for implementation of the award. The roznama on the record of Industrial Court also indicates that the Respondent - Company, petitioner herein, was duly served. The roznama shows that the complaint was received and registered on 25/07/2006 and on 11/08/2006 notice was served on the Respondent - Company. The roznama dated 11/08/2006 discloses that the representative of the Respondent - Comany was present and the Court was on leave and, therefore, time was given to the Respondent - Company to file reply and appearance. So, it cannot be said that the Petitioner - Company was not aware of the proceedings which were initiated by the Industrial Court in Complaint (ULP) No. 426 of 2006. Thereafter, however, none appeared on behalf of the Respondent - Compnay. The roznama

indicates that on 6/12/2006 when the Court was on leave and the additional charge was with the another member, the representative of the Company was present. Again on 02/02/2007, the advocate for Respondent - Company was present. The record further indicates that a notice has been served by speed post on Shri Pankaj Shah, Director of the Company and that the said notice was received by one Rakesh Shivgan on 18/07/2006 at 12 O' clock. The voucher of Shree Maruti Courier Services was also brought on record. Further, the Industrial Court Notice in Form-20 was also received by the Petitioner - Company. The Notice issued by the Industrial Court in Form-21 also has been received on behalf of the Company. Further, the application was preferred by the authorized signatory one Mr. Dinesh Patel requesting for adjournment on the ground that Respondent No.2 - Pankaj Shah was admitted in the hospital. Thereafter, the order was passed on 14/08/2006. It can be seen that even on that date on which the ex-parte award was passed, neither the representative of the Company nor their counsel was present and, as a result, the Industrial Court had no option but to pass the order dated 14/08/2006. The

submission of the learned Counsel appearing on behalf of the Petitioner that the Petitioner was not served is, therefore, patently false and incorrect. The record indicates that the Petitioner Company had taken part in conciliation proceedings and, thereafter, for the reasons best known to them, remained continuously absent. This only indicates that the Petitioner - Company does not have any regard for the proceedings which are taken out before the Labour Court and the Industrial Court. This reflects an adamant stand of the Petitioner - Company of not to attending the Court in spite of service of notice. In view of this conduct on the part of the Petitioner - Company, the Labour Court and, thereafter, Industrial Court had no other option but to pass ex-parte orders. The submission of the learned Counsel appearing on behalf of the Petitioner that no hearing was given to the Petitioner and no opportunity was given for representing its case is totally incorrect. The Petitioner - Company has not shown sufficient cause for restoration of the ex-parte award passed by the Labour Court and the ex-parte order passed by the Industrial Court. The reliance which is placed by the learned Counsel appearing on behalf

of the Petitioner on the ratio of the judgment in the case of Enron Oil & Gas India Ltd. (supra) will not apply to the facts of the present case. So far as the merits of the case are concerned, since sufficient cause has not been shown by the Petitioner - Company for not remaining present before the Labour Court, it is not really open for this Court to examine the merits of the case unless the Petitioner - Company crosses the initial hurdle of showing sufficient cause for not remaining present. It is, therefore, not open for the Petitioner - Company to argue on the merits of the case at this stage.

7. Even otherwise, in order to ensure that no injustice is caused to the Petitioner - Company, I have examined the order passed by the Labour Court. The Labour Court has, on the basis of the evidence which is on record viz. letter of appointment and the other correspondence, as also the written statement filed on behalf of the Petitioner - Company before the Conciliation Officer, has taken a veiw which, in my opinion, is a plausible view and, therefore, even on merits, I do not see any reason to interfere with the impugned order

while exercising writ jurisdiction of this Court under Article 226 of the Constitution of India.

8. It must be stated here that, normally, in cases where ex-parte orders are passed, this Court has always felt that the matter should be remanded and that the case should be decided on merits within a time bound schedule. However, in the present case, the roznama and the record and proceedings which were specifically called by this Court indicate that the Petitioner - Company had deliberately chosen not to appear before the Labour Court as also Industrial Court and only when Misc. Criminal Complaint was filed and served, thereafter the Petitioner has chosen to file this Writ Petition in this Court. There is a growing tendency among the employers of not appearing before the Labour Court. It is said that a dispute between the workman and the employer is always an unequal fight as the workman who has no resources at his disposal has to fight a loosing battle; on the one hand he is out of service and, on the other hand, he has to pursue his legal remedies which tend to go for years. In cases where it is found that the Company has, in

spite of service, chosen to appear before the Labour Court in the reference which is made by the workman, this Court shall not extend the benefit of deliberate absence on the part of the Petitioner - Company by restoring the reference. In my view, this is a fit case where Petition deserves to be dismissed in limine. There is no merit, therefore, in the submissions made by the learned Counsel appearing on behalf of the Petitioner.

9. Petition is dismissed in limine. Under the circumstances, there shall be no order as to costs.

(V.M. KANADE, J.)